

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CHRISTOPHER A. JONES,

Plaintiff,

vs.

DWIGHT NEVEN, *et al.*,

Defendants.

Case No. 2:07-cv-01088-JCM-GWF

ORDER

Supplement to Motion to Compel (#129)

This matter is before the Court on Plaintiff Christopher A. Jones' Supplement to Motion to Compel (#129), filed March 9, 2011.

Plaintiff requests an order compelling Ely State Prison and the Nevada Department of Corrections to allow him to keep his medical records in his prison cell. (#129). Plaintiff previously raised this issue at a March 2, 2011 hearing on his motion to compel production of his personal medical records that were attached to Defendant's motion to dismiss (#52). (*See Min. of Proceedings*, #124). During the hearing, Defendants argued that prison regulations prohibit prisoners from keeping medical records in their cells. (*Id.*) Plaintiff argued that he had been granted leave in prior cases by the Court to keep his personal records in his cell. (*Id.*) The Court declined to rule on the matter without additional briefing and ordered that Plaintiff should file a supplement to his motion to compel (#119) and include evidence that he has previously been granted leave to keep records in his cell. (#128).

Plaintiff filed his supplement on March 9, 2011. (#129). The supplement includes evidence that he has previously been allowed to physically possess medical records in his cell, including a November 6, 2001 memorandum from the Nevada Department of Corrections granting him authorization to do so. (*Id.* at 6). Based on this evidence, the Court will grant Plaintiff's request.

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1 In addition, Defendants have not filed a response to Plaintiff's supplement. In its order granting
2 Plaintiff's motion to compel, the Court granted Plaintiff until March 9, 2011 to file a supplement to his
3 motion to compel. (#128). The order also states that Defendants should file a response within one
4 week after the date Plaintiff filed his supplement or before March 16, 2011. (*Id.*) To date, Defendants
5 have not responded to Plaintiff's supplement (#129) and the time for opposition has now passed. LR 7-
6 2(d) states in pertinent part, that "[t]he failure of an opposing party to file points and authorities in
7 response to any motion shall constitute a consent to the granting of the motion." As a result, the Court
8 will grant the present motion based on the substantive merits and based on Defendants' failure to
9 respond. Accordingly,

10 **IT IS HEREBY ORDERED** that Plaintiff Christopher A. Jones' Supplement to Motion to
11 Compel (#129) is **granted**. The Nevada Department of Corrections and Ely State Prison officials shall
12 allow Plaintiff to keep his personal medical records, including the medical records attached to
13 Defendants' motion to dismiss (#52), in his possession in his prison cell.

14 DATED this 28th day of March, 2011.

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17 **GEORGE FOLEY, JR.**
18 **United States Magistrate Judge**
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